Parminder Kaur a/p Kamiker Singh & Anor v Public Prosecutor

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL REVIEW B-06-3–12 OF 2023
AHMAD ZAIDI IBRAHIM, AZMI ARIFFIN AND CHOO KAH SING JJCA
27 AUGUST 2013

Criminal Law — Penal Code — Section 471 — Offence of using as genuine a forged document — Sessions court punished accused person under s 467 and sentenced accused persons to nine years imprisonment — High Court affirmed decision of sessions court — Subsequent appeal to Court of Appeal allowed in part and imprisonment term reduced to six years — Motion to review decision of Court of Appeal — Questions of law — Whether punishment for conviction for offence under s 471 of the Penal Code should be s 465 instead of s 467 as stated in charge — Whether punishment section in charge framed within ambit of law — Whether prosecution required to establish ingredients of offence in s 467 as well — Whether public prosecutor had vast power to institute criminal proceeding and select offence to be charged

The sessions court convicted the appellants of committing an offence under s 471 of the Penal Code ('the PC') and punished the appellants under s 467 of the PC. The appellants were sentenced to nine years imprisonment. The appellants appealed to the High Court but the High Court affirmed the conviction and sentence. On appeal to the Court of Appeal, the appeal was allowed in part whereby the Court of Appeal allowed the nine years imprisonment term to be reduced to six years but maintained the conviction finding ('impugned decision'). Subsequently, the appellants filed the motion to review the impugned decision. Essentially, the appellants' complaint was that they had been convicted and sentenced under a defective charge because for an offence charge under s 471 of the PC, the punishment section ought to be s 465, and it was not s 467. Further, it was submitted that the sentence imposed on the appellants was also wrong and illegal in law. The punishment under s 465 of the PC was imprisonment for a term which may extend to two years or a fine or both. Whereas, the punishment under s 467 was imprisonment for a term which may extend to 20 years and a fine. As such, the appellants submitted that they could not be punished with an imprisonment sentence that exceeded the two years as stated in s 465 of the PC. In the present case, the document in question was a Form 14A ('forged document') of the First Schedule of the National Land Code ('the NLC'). The motion was granted, but the review was only in relation to the question of law raised by the appellants which was whether the punishment for the conviction of the offence in s 471

of the PC should be s 465, instead of s 467 as stated in the charge ('the question of law').

Held, dismissing revision; maintaining decision of Court Appeal:

(1) The forged document in the present case was an instrument which was capable of transferring and creating a legal right, ie, a proprietary right, in land under s 215 of the NLC. Hence, this forged document fell within the meaning of a 'valuable security' document under the Penal Code. As the forged document was a valuable security, it therefore fell within a specified class of document under s 467 of the PC (see paras 19–20).

(2) The appellants' submission that the punishment provision should be s 465, instead of s 467 of the PC as not agreed by the court. The reason was because even if the phrase 'makes any false document' in s 463 be construed to mean the same as the phrase 'as if he had forged such document' in s 471, the punishment in s 465 still could not be used, as there was a specific punishment section for the forged document in question, ie, a valuable security, which was within a specific class of documents in s 467 of the PC (see para 27).

(3) If a person was charged for fraudulently or dishonestly using as genuine any document which he knew or had reason to believe to be forged under s 471, the punishment sections could be ss 465, 466 or 467 of the PC. If the forged document was a public document within the meaning of s 466, the punishment section was s 466. If the forged document fell within the specified classes of documents in s 467, then the punishment section was s 467. If the forged document did not fall within s 466 or s 467, then the punishment section ought to be s 465 by virtue of the interpretation of the phrase 'makes any false document' in s 463 (read together with s 464) to mean forgery of a document for the purpose of the phrase 'as if he had forged such document' in s 471 of the PC (see para 28).

(4) The appellants' submission that the combining two separate and distinct offences that involved different elements into one charge had resulted in the charge being illegal or tantamount to duplicity was misconceived. The ingredients needed to be established were only those within s 471 of the PC. It was wrong for the appellants' to submit that there was a requirement for the public prosecutor to establish all the ingredients of the offence in s 467 as well. As long as the false document concerned fell within the specific classes of documents mentioned in s 467, it would suffice for the public prosecutor to rely on the punishment provision stated in s 467 (see para 31).

(5) It is trite law that the public prosecutor had vast power to institute a criminal proceeding, including to select the offence to be charged, under

s 376(1) of the Criminal Procedure Code read together with art 145(3) of the Federal Constitution. Therefore, in the present case, the public prosecutor had opted to charge the appellants for using a forged document, and that forged document fell within one of the specific classes of documents in s 467, therefore, the charge and the punishment section were properly framed within the ambit of the law. In the circumstances, the charge was properly framed, and the charge was not defective, wrong or illegal in law (see paras 30 & 44).

(6) The law allowed s 471 to be read with the relevant punishment provision in another offence section. Therefore, it could not be said that the charge was illegally framed or that the charge was tainted by duplicity. If Parliament had intended the punishment for a conviction under s 471 to be limited to s 465, Parliament would have explicitly said the punishment section is s 465. Parliament had left the punishment in s 471 open for the public prosecutor to choose the appropriate punishment section by the use of the phrase 'as if he had forged such document' (see para 32).

(7) The High Court judge had misunderstood the application of s 467 in the offence section of s 471. The High Court judge was correct to say that there was 'no presumption or inference arises in this provision that in using a forged document the person is said to have forged the document' but had erroneously rejected the application of s 467 in the context of s 471. Further, although s 467 begins with 'whoever forges a document', that did not mean that created another offence of forging the document in question when the section was used for a charge under s 471. The phrase 'as if he had forged such document' was related to identifying which punishment section was to be applied for the offence under s 471. This was because as s 471 stated clearly that the convicted person 'shall be punished in the same manner as if he had forged such document.' A charge for an offence under s 471 that provided for punishment under s 467 did not tantamount to a misjoinder because the reference to s 467 was solely for purpose of the punishment to be applied (see paras 35–36).

(8) The punishment section for the offence under s 471 of the PC would depend on the nature of the document that was used as a genuine document. If the document in question fell within those documents mentioned in s 466, then the punishment in s 466 shall be applicable. Likewise, if the document in question fell within those specific classes of documents in s 467, then the punishment in s 467 shall be applicable. If the document in question did not fall within either s 466 or s 467, then the appropriate punishment section would be s 465 by the interpretation of the phrase 'makes a false document' in s 463 to include the forging of a document within the phrase 'as if he had forged such document' in s 471 of the PC (see para 43).

[Bahasa Malaysia summary

Mahkamah sesyen telah mensabitkan perayu-perayu di bawah s 471 Kanun Keseksaan ('KK') dan menghukum perayu-perayu di bawah s 467 KK. Perayu-perayu dijatuhi hukuman penjara sembilan tahun. Perayu-perayu merayu ke Mahkamah Tinggi namun Mahkamah Tinggi mengekalkan sabitan dan hukuman itu. Semasa rayuan ke Mahkamah Rayuan, rayuan itu dibenarkan sebahagiannya di mana Mahkamah Rayuan membenarkan hukuman penjara sembilan tahun dikurangkan kepada enam tahun tetapi mengekalkan sabitan ('keputusan yang dipertikaikan'). Selepas itu, perayu-perayu memfailkan Usul untuk meneliti semula keputusan yang dipertikaikan tersebut. Pada asasnya, hujahan perayu adalah bahawa mereka telah disabitkan kesalahan dan dijatuhi hukuman di bawah pertuduhan yang cacat kerana untuk pertuduhan kesalahan di bawah s 471 KK, seksyen hukuman yang sepatutnya adalah dibawah s 465, bukannya s 467. Selanjutnya, dihujahkan bahawa hukuman yang dijatuhkan terhadap perayu-perayu juga salah dan menyalahi undang-undang. Hukuman di bawah s 465 KK adalah penjara selama tempoh sehingga dua tahun atau denda atau kedua-duanya. Manakala, hukuman di bawah s 467 adalah penjara selama tempoh sehingga 20 tahun dan denda. Oleh itu, perayu berhujah bahawa mereka tidak boleh dihukum dengan hukuman penjara yang melebihi dua tahun seperti yang diperuntukkan di bawah s 465 KK. Dalam kes ini, dokumen yang dipertikaikan adalah Borang 14A ('dokumen palsu') Jadual Pertama Kanun Tanah Negara ('KTN'). Usul tersebut telah dibenarkan, namun prosiding semakan tersebut hanya berkaitan dengan persoalan undang-undang yang dibangkitkan oleh perayu iaitu sama ada hukuman bagi sabitan kesalahan dalam s 471 KK sepatutnya di bawah s 465, bukannya s 467 seperti yang dinyatakan di dalam pertuduhan ('persoalan undang-undang').

Diputuskan, menepikan semakan; mengekalkan keputusan Mahkamah Rayuan:

(1) Dokumen yang dipalsukan di dalam kes ini adalah instrumen untuk memindahkan dan mewujudkan hak undang-undang, iaitu, hak proprietari hartanah di bawah s 215 KTN. Oleh itu, dokumen palsu ini termasuk dalam maksud dokumen 'cagaran berharga' di bawah Kanun Keseksaan. Oleh kerana dokumen palsu itu adalah adalah cagaran berharga, ianya termasuk dalam kategori dokumen yang dinyatakan di bawah s 467 KK (lihat perenggan 19–20).

(2) Hujahan perayu-perayu bahawa peruntukan hukuman seharusnya di bawah s 465, dan bukannya s 467 KK tidak dipersetujui oleh mahkamah ini. Hal ini kerana walaupun frasa 'membuat sebarang dokumen palsu' di dalam s 463 ditafsirkan sebagai maksud yang sama dengan frasa 'seolah-olah dia telah memalsukan dokumen tersebut' dalam s 471, hukuman dalam s 465 masih tidak boleh digunakan, kerana terdapat

peruntukan hukuman khusus untuk dokumen palsu tersebut, iaitu, cagaran berharga yang merupakan kategori dokumen yang dinyatakan di dalam s 467 KK (lihat perenggan 27).

(3) Jika seseorang dituduh kerana menipu atau secara tidak jujur menggunakan dokumen yang dianggap tulen yang dia tahu atau mempunyai sebab untuk mempercayai ianya dipalsukan di bawah s 471, peruntukan hukuman boleh dimasukkan di bawah ss 465, 466 atau 467 KK. Jika dokumen palsu itu adalah dokumen awam menurut s 466, peruntukan hukuman adalah s 466. Jika dokumen palsu itu termasuk dalam kelas dokumen yang dinyatakan di dalam s 467, maka peruntukan hukuman adalah s 467. Jika dokumen palsu itu tidak termasuk di dalam ss 466 atau 467, maka peruntukan hukuman sepatutnya menjadi s 465 berdasarkan tafsiran frasa 'membuat apa-apa dokumen palsu' dalam s 463 (dibaca bersama dengan s 464) yang bermaksud pemalsuan dokumen untuk tujuan frasa 'seolah-olah dia telah memalsukan dokumen itu' menurut s 471 (lihat perenggan 28).

(4) Hujahan perayu-perayu bahawa gabungan dua kesalahan berasingan dan berbeza yang melibatkan unsur-unsur berbeza ke dalam satu pertuduhan telah mengakibatkan pertuduhan itu menyalahi undang-undang atau bertindih adalah salah. Elemen-elemen yang perlu dibuktikan hanyalah elemen-elemen di dalam s 471 KK. Adalah salah bagi perayu untuk menghujahkan bahawa terdapat keperluan bagi pendakwa raya untuk membuktikan kesemua elemen kesalahan di dalam s 467 juga. Selagi dokumen palsu berkenaan termasuk dalam kelas dokumen tertentu yang dinyatakan dalam s 467, sudah memadai bagi pendakwa raya untuk bergantung pada peruntukan hukuman di dalam s 467 (lihat perenggan 31).

(5) Adalah menjadi undang-undang yang mantap bahawa pendakwa raya mempunyai kuasa untuk memulakan prosiding jenayah, termasuk memilih kesalahan yang akan didakwa, di bawah s 376(1) Kanun Tatacara Jenayah yang dibaca bersama dengan perkara 145(3) Perlembagaan Persekutuan. Oleh itu, dalam kes ini, pendakwa raya telah memilih untuk mendakwa perayu kerana menggunakan dokumen palsu, dan dokumen palsu itu termasuk dalam salah satu kategori dokumen tertentu di dalam s 467. Oleh itu, pertuduhan dan seksyen hukuman telah dirangka dengan betul dalam lingkungan undang-undang. Dalam keadaan itu, pertuduhan itu dirangka dengan betul, dan pertuduhan itu tidak cacat, salah atau menyalahi undang-undang (lihat perenggan 30 & 44).

(6) Undang-undang membenarkan s 471 dibaca dengan peruntukan hukuman yang berkaitan dalam peruntukan kesalahan lain. Oleh itu, tidak boleh dikatakan bahawa pertuduhan itu adalah salah atau bertindih. Sekiranya Parlimen berhasrat hukuman bagi sabitan di bawah

s 471 dihadkan kepada s 465, Parlimen akan secara khususnya menyatakan peruntukan hukuman adalah di bawah s 465. Parlimen telah memberi ruang kepada pendakwa raya untuk memilih seksyen hukuman yang sesuai dengan menggunakan frasa 'seolah-olah dia telah memalsukan dokumen itu' menurut s 471 (lihat perenggan 32).

(7) Hakim Mahkamah Tinggi telah terkhilaf mengenai pemakaian s 467 di bawah peruntukan kesalahan s 471. Hakim Mahkamah Tinggi adalah betul ketika mengatakan bahawa 'tiada anggapan atau kesimpulan yang timbul dalam peruntukan ini bahawa ketika menggunakan dokumen palsu orang itu dikatakan telah memalsukan dokumen itu' tetapi telah terkhilaf ketika menolak pemakaian s 467 di dalam s 471. Selanjutnya, walaupun s 467 bermula dengan 'barang siapa yang memalsukan dokumen', hal ini tidak bermakna ianya mewujudkan satu lagi kesalahan memalsukan dokumen di dalam kes ini apabila peruntukan itu digunakan untuk pertuduhan di bawah s 471. Frasa 'seolah-olah dia telah memalsukan dokumen itu' adalah berkaitan dengan mengenal pasti seksyen hukuman mana yang akan digunakan untuk kesalahan di bawah s 471. Hal ini kerana seperti yang dinyatakan dengan jelas bahawa orang yang disabitkan kesalahan 'akan dihukum dengan cara yang sama seolah-olah dia telah memalsukan dokumen tersebut'. Pertuduhan bagi kesalahan di bawah s 471 yang memperuntukkan hukuman di bawah s 467 bukanlah satu pertindihan kerana rujukan kepada s 467 adalah semata-mata untuk menunjukkan hukuman yang akan dikenakan (lihat perenggan 35–36).

(8) Peruntukan hukuman bagi kesalahan di bawah s 471 KK bergantung kepada sifat dokumen yang digunakan sebagai dokumen tulen. Jika dokumen di dalam kes ini termasuk dalam dokumen-dokumen yang disebut dalam s 466, maka hukuman dalam s 466 akan terpakai. Begitu juga jika dokumen yang dimaksudkan termasuk dalam kelas-kelas dokumen tertentu di dalam s 467, maka hukuman dalam s 467 akan terpakai. Jika dokumen yang dipersoalkan tidak termasuk dalam s 466 atau s 467, maka peruntukan hukuman yang sesuai ialah s 465 dengan tafsiran frasa 'membuat dokumen palsu' dalam s 463 yang termasuk pemalsuan dokumen dalam frasa 'seolah-olah dia telah memalsukan dokumen itu' menurut s 471 KK (lihat perenggan 43).]

Cases referred to

Chung Onn v PP [2010] 6 CLJ 211, HC (refd)
Tan Kar Loo lwn Pendakwa Raya [2013] 7 MLJ 714; [2012] MLRHU 1089, HC (refd)
Tan Phak Tin v PP [2004] 2 MLRH 826, HC (distd)

Legislation referred to

Criminal Procedure Code s 376(1)
Federal Constitution art 145(3)
National Land Code s 215, First Schedule, Form 14A
Penal Code ss 29, 30, 109, 463, 464 464(a), (b), (c), 465, 466, 467, 468, 470, 471, Chapter XVIII
Stamp Act 1949 First Schedule, item 32

Appeal from: *Parminder Kaur a/p Kamiker Singh dan satu lagi lwn Pendakwa Raya* [2019] MLJU 1750 (High Court, Shah Alam)

Harpal Singh (with Mohd Yazid bin Mustafa, Natasha Parvena Loh Velu, Tee Yuan Sheng and Nadim Gulam Rasa) (Harpal & Assoc) for the appellants.
Mohd Khushairy Ibrahim (with Tetralina Ahmed Fauzi) (Deputy Public Prosecutor, Attorney General's Chamber) for the prosecution.

Choo Kah Sing J:

INTRODUCTION

[1] On 9 February 2024, the Court of Appeal allowed a motion ('the motion') filed by the appellants via B-06–3–12 of 2023 for a revision of its decision dated 10 July 2023 ('the impugned decision') which was decided by a different panel of Justices of the Court of Appeal.

[2] On 18 April 2018, the sessions court convicted the appellants of committing an offence under s 471 of the Penal Code, and they were punished under s 467 of the Penal Code. The appellants were sentenced to nine years imprisonment. The appellants appealed to the High Court. On 4 July 2019, the High Court affirmed the conviction and the sentence.

[3] On appeal to the Court of Appeal, the appeal was allowed in part. On 10 July 2023, the Court of Appeal allowed the nine years imprisonment term to be reduced to six years, but maintained the conviction finding.

[4] On 18 December 2023, the appellants filed the Motion to review the impugned decision. The motion was granted, but the review was only in relation to the question of law raised by the appellants which was 'whether the punishment for the conviction of the offence in s 471 Penal Code should be s 465, instead of s 467 as stated in the charge' ('the question of law').

[5] The question of law is now before us. This court will confine its review exercise only to the question of law. Although the appellants were permitted to

raise issues in the review, those issues must be confined and relevant to the question of law.

THE SALIENT FACTS WHICH ARE RELEVANT TO THE REVIEW

The charges

[6] The amended charge against the first appellant reads as follow:

> Bahawa kamu pada 10 April 2013 di Premis Pejabat Tanah & Galian Selangor, Bangunan Sultan Salahuddin Abdul Aziz Shah di dalam Bandaraya Shah Alam dalam Negeri Selangor telah dengan curangnya menggunakan sebagai tulen dokumen:
>
> Hukuman
>
> Borang Pindahmilik Tanah, Bahagian atau Pajakan (Borang 14A kanun tanah Negara) yang bertarikh 15 mac 2013 bagi HS (D) 64312 PT 6247 Lot Nombor 20-B4-5 Nombor 46 jalan BP 11, Bukit Permata, Gombak, Selangor.
>
> Yang mana dokumen ini merupakan satu cagaran berharga seperti yang diperihalkan di bawah Seksyen 467 Kanun Keseksaan *dan kamu ada sebab mempercayai bahawa dokumen tersebut adalah palsu ketika ia diserahkan kepada Pejabat tanah & Galian Selangor tersebut, dan oleh yang demikian kamu telah melakukan kesalahan di bawah* seksyen 471 Kanun Keseksaan *yang boleh dihukum dibawah* Seksyen 467 *Kanun yang sama.*
>
> Penjara selama tempoh yang boleh sampai 20 tahun dan bolehlah juga dikenakan denda.

[7] The amended charge against the second appellant reads as follow:

> Bahawa kamu pada 10 April 2013 di Premis Pejabat Tanah & Galian Selangor, Bangunan Sultan Salahuddin Abdul Aziz Shah di dalam Bandaraya Shah Alam dalam Negeri Selangor telah bersubahat bersubahat dengan Parminder Kaur A/P Kamiker Singh (No Kp: 620412–10–6766) untuk melakukan dengan curangnya menggunakan sebagai tulen dokumen:
>
> Borang Pindahmilik Tanah, Bahagian atau Pajakan (Borang 14A Kanun Tanah Negara) yang bertarikh 15 Mac 2013 bagi HS (D) 64312 PT 6247 Lot Nombor 20-B4–5 Nombor 46 Jalan BP 11, Bukit Permata, Gombak, Selangor;
>
> Yang mana dokumen ini merupakan satu cagaran berharga seperti yang diperihalkan di bawah Seksyen 467 Kanun Keseksaan dan dia ada sebab mempercayai bahawa dokumen tersebut adalah palsu ketika ia diserahkan kepada Pejabat tanah & Galian Selangor tersebut, di mana kesalahan menggunakan sebagai tulen dokumen cagaran berharga tersebut telah dilakukan atas sebab-sebab persubahatan kamu dan oleh demikian kamu telah melakukan kesalahan di bawah seksyen 471 Kanun Keseksaan yang boleh dihukum dibawah Seksyen 467 kanun yang sama dibaca Bersama seksyen 109 Kanun Keseksaan.
>
> Hukuman

Penjara selama tempoh yang boleh sampai 20 tahun dan bolehlah juga dikenakan denda.

[8] The first appellant was tried under Case No MSJ6-62K-111–11 of 2016. The second appellant was tried under Case No MSJ6-62K-112–11 of 2016. Both cases were tried together at the Sessions Court of Shah Alam.

[9] The appellants did not raise the question of law at the trial court, High Court and the Court of Appeal (in the previous appeal), and it was raised for the first time in the motion. The Court of Appeal that heard the motion found the question of law to be novel and decided that the question of law ought to be ventilated fully.

The question of law — Whether the punishment for the conviction of the offence in s 471 of the Penal Code should be s 465, instead of s 467 as stated in the charge

[10] Essentially, the appellants' complaint is that they have been convicted and sentenced under a defective charge. The appellants' counsel submitted that the charge was defective, wrong and illegal in law because for an offence charge under s 471 of the Penal Code, the punishment section ought to be s 465, and it was not s 467.

[11] Further, the sentence imposed on the appellants was also wrong and illegal in law, the appellants' counsel submitted. The punishment under s 465 of the Penal Code is imprisonment for a term which may extend to two years or a fine or both. Whereas, the punishment under s 467 is imprisonment for a term which may extend to 20 years and a fine. As such, the appellants' counsel submitted that the appellants could not be punished with an imprisonment sentence that exceeded the two years as stated in s 465 of the Penal Code.

[12] In the event the appellants' counsel's submission is correct, then the legality of the sentence imposed, ie, six years imprisonment (as reduced by the Court of Appeal) and the charge could be questioned, ie, it could be a defective charge.

ANALYSIS AND FINDINGS OF THIS COURT

[13] Chapter XVIII of the Penal Code (from ss 463–489D) deals with criminal offences relating to documents, currency notes and bank notes. In our present case, the criminal offence is related to only documents. For ease of reference the relevant sections of the law pertaining to the present case are reproduced below:

463 Forgery

Whoever makes any false document or part of a document with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery

464 Making a false document

A person is said to make a false document —

(a) who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by, or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed;

(b) who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself for by any other person, whether such person be living or dead at the time of such alteration; or

(c) who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him he does not, know the contents of the document or the nature of the alteration.

ILLUSTRATIONS

(a) A has a letter of credit upon B for ringgit 1,000 written by Z. A in order to defraud B, adds a cypher to the 1,000, and makes the sum 10,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(b) A, without Z's authority, affixes Z's seal to a document, purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B, and thereby of obtaining from B the purchase money. A has committed forgery.

(c) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of one thousand ringgit. A commits forgery.

(d) A leaves with B his agent, a cheque on a banker, signed by A, without inserting the sum payable, and authorizes B to fill up the cheque by inserting a sum not exceeding one thousand ringgit for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of ten thousand. B commits forgery.

(e) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker, and

intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(f) Z's will contains these words: 'I direct that all my remaining property be equally divided between A, B and C'. A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(g) A endorses a promissory note and makes it payable to Z, or his order, by writing on the bill the words 'Pay to Z, or his order', and signing the endorsement. B dishonestly erases the words 'Pay to Z, or his order', and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(h) A sells and conveys an estate to Z. A after wards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(i) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instruction, induces Z to sign the will. A has committed forgery.

(j) A writes a letter and sign sit with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(k) A without B's authority writes a letter and signs it in B's name, certifying to A's character, intending there by to obtain employment under Z. A has committed forgery, inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service.

Explanation 1 — A man's signature of his own name may amount of forgery.

ILLUSTRATIONS

(a) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(b) A writes the word 'accepted' on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B knowing the fact draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(c) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it

to be believed that it was endorsed by the person to whose order it was payable: here A has committed forgery.

(d) A purchases an estate sold under execution of a decree against B. B after the seizure of the estate, in collusion with Z, executes a lease of the estate to Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(e) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors, and in order to give a colour to the transaction, writes a promissory note, binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2 — The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

ILLUSTRATION

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

465 Punishment of forgery

Whoever commits forgery shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

466 Forgery of a record of a Court, or a public register of births, etc.

Whoever forges a document, purporting to be a record or proceeding of or before a Court, or a Register of Birth, Baptism, Marriage or Burial, or a Register kept by a public servant as such, or a certificate or document, purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

467 Forgery of a valuable security or will

Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property or valuable security, or any document purporting to be an acquittance or receipt, acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to fine.

470 'A forged document'

A false document, made wholly or in part by forgery, is designated 'a forged document' A

471 Using as genuine a forged document

Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document. B

[14] The nub of the revision is not concerned with the question whether the ingredients of the offence which the appellants have been convicted had been proven, rather the question is: What is the correct punishment section to be imposed or applied for a conviction of the offence under s 471 of the Penal Code? C

General provisions of forgery — Whoever makes any false document

D

[15] Generally, the offence section of committing forgery in relation to a document ('document' as defined in s 29 of the Penal Code) is found in s 463 of the Penal Code. It states 'whoever makes any false document … commits forgery.' It follows with ss 464(a) to (c) explaining those situations that could be construed as making a false document. The punishment section for committing forgery is found in s 465 of the Penal Code. Therefore, if a person is charged under s 463, upon conviction, he could be punished under s 465 of the Penal Code which the punishment is imprisonment for a term which may extend to two years or a fine or both. E

F

[16] After the general provisions vis a vis ss 463, 464 and 465 of the Penal Code that deal with the commission of an offence of forgery, the Penal Code goes on to criminalise the act of forging certain specific classes of documents. Those sections are ss 466 and 467 of the Penal Code.

G

Whoever forges certain specific classes of documents

[17] Section 466 deals with forging public records and court documents. Section 467 deals with forging a valuable security or a will, or an authority to adopt a son, or purporting to give authority to any person to make or transfer any valuable security and etcetera. Sections 466 and 467 are specific offences dealing with forging specific classes of documents, and the punishment section is imbued within the same offence section. H

[18] The punishment for a conviction under s 466 is imprisonment for a term which may extend to seven years and a fine. Whereas, the punishment for the conviction under s 467, as mentioned earlier, is imprisonment for a term which may extend to twenty years and a fine. For both offences, other than establishing the ingredients in s 463 and 464, there is an extra ingredient to I

A establish, namely, the false document must be one of the classes of documents specified in the section charged.

[19] In the present case, the document (exh P41A) in question was a Form 14A ('the forged document') of the First Schedule of the National Land Code ('the NLC'). It had been established in the trial that the document (exh P41A) in question was indeed a false document within the meaning of s 464 of the Penal Code. Section 470 of the Penal Code explains that a false document that is made wholly or partly by forgery is designated a forged document.

[20] The forged document in the present case is an instrument which is capable of transferring and creating a legal right, ie, a proprietary right, in land under s 215 of the NLC. Hence, this forged document falls within the meaning of a 'valuable security' document under the Penal Code. Section 30 of the Penal Code explains 'valuable security' as follows:

> 30 'Valuable security'
>
> The words 'valuable security' denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished, or released, or whereby any person acknowledges that he lies under the legal liability, or has not a certain legal right.
>
> ILLUSTRATION
>
> A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a 'valuable security'.

[21] Based on the above definition section, the forged document is a valuable security, and therefore falls within a specified class of document under s 467 of the Penal Code.

[22] The public prosecutor did not charge the appellants for forging the forged document under s 467, instead they were charged for committing the offence of s 471. The difference in these two offences is that s 467 deals with a person who forges the false document/forged document, whereas, s 471 deals with a person who fraudulently or dishonestly uses as genuine any document (as defined in s 29 of the Penal Code) which he knows or has reason to believe to be a forged document.

[23] Section 471 states as follows:

> 471 Using as genuine a forged document
>
> Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner *as if he had forged such document*. (Emphasis added.)

Section 471 does not have an imbued punishment provision. However, it provides that the person convicted 'shall be punished in the same manner as if he had forged such document'. The law states 'punished in the same manner as if he had forged such document.' It is clear that a person who fraudulently or dishonestly uses a false document/forged document will be punished as if he had forged such document.

[24] There are two key words to determine which is the punishment section to be applied for the offence in s 471 of the Penal Code.

[25] The first key word is '... forged', which is expressed in the form of a verb, found at the end of the section. There are only two provisions that mention the word 'forges' a document, namely ss 466 and 467. However, one may construe the phrase 'makes any false document' found in s 463, which the punishment section is found in s 465, to mean the forging of a document for the purpose of the phrase 'as if he had forged such document' in s 471. Therefore, there are three relevant punishment sections to be considered for the offence in s 471 of the Penal Code. Which section would be the appropriate section to apply as the punishment section? This leads to the consideration of the second key wording.

[26] The second key wording are 'such document' at the end of the section. Therefore, it is incumbent upon the public prosecutor to look at the document in question. If such document, ie, the false document or forged document, is found to be a document pertaining to a public record or court document, then the punishment section to be applied is s 466 of the Penal Code. If such document is found to be a document that falls within the specified classes of documents in s 467, then the punishment section to be applied is s 467 of the Penal Code. If such document could not be found in either section (ss 466 or 467), then the punishment section to be applied is s 465 of the Penal Code.

[27] In the present case, the punishment provision in s 466 could not be applied simply because the forged document is not a document pertaining to a public record or court document. As explained earlier, the forged document is a 'valuable security' which falls within one of the specific classes of documents in s 467, therefore, the punishment provision in s 467 should apply.

[28] This court could not agree with the appellants' counsel's submission that the punishment provision should be s 465, instead of s 467 of the Penal Code. The reason is simply because even if the phrase 'makes any false document' in s 463 be construed to mean the same as the phrase 'as if he had forged such document' in s 471, the punishment in s 465 still could not be used, as there is a specific punishment section for the forged document in question, ie, a valuable security, which is within a specific class of documents in s 467 of the Penal Code.

[29] Based on the above analysis, it could be surmised as follows. If a person is charged for fraudulently or dishonestly using as genuine any document which he knows or has reason to believe to be forged under s 471, the punishment sections could be ss 465, 466 or 467. If the forged document is a public document within the meaning of s 466, the punishment section is s 466. If the forged document falls within the specified classes of documents in s 467, then the punishment section is s 467. If the forged document does not fall within s 466 or s 467, then the punishment section ought to be s 465 by virtue of the interpretation of the phrase 'makes any false document' in s 463 (read together with s 464) to mean forgery of a document for the purpose of the phrase 'as if he had forged such document' in s 471.

[30] It has to be clarified that although the punishment provision for s 471 could be either one of the sections mentioned above, that does not mean that if the public prosecutor opted to rely on that punishment section, the public prosecutor is then required to establish all the ingredients of that offence section as well. The required ingredients to be established are those ingredients in s 471, not those in the punishment provision. Therefore, the public prosecutor need not prove it was the appellants who forged or made the forged document. All that is required from the public prosecutor is to establish that the accused fraudulently or dishonestly used the forged document as genuine (which they knew or had reason to believe it was a forged document).

[31] It is trite law that the public prosecutor has vast power to institute a criminal proceeding, including to select the offence to be charged, under s 376(1) of the Criminal Procedure Code (Act 593) read together with art 145(3) of the Federal Constitution. Therefore, in the present case, the public prosecutor had opted to charge the appellants for using a forged document, and that forged document falls within one of the specific classes of documents in s 467, therefore, the charge and the punishment section were properly framed within the ambit of the law.

Other issues raised by the appellants' counsel

[32] The appellants' counsel submitted that the combining two separate and distinct offences that involved different elements into one charge has resulted in the charge being illegal or tantamount to duplicity. This submission is misconceived. As explained above, the ingredients needed to be established are only those within s 471 of the Penal Code. The ingredients are: (a) fraudulent or dishonest use of a document as genuine; and (b) knowledge or reasonable belief on the part of the accused using the document that it is a forged document. Of course, the document that was used by the accused has to be established to be a false document or a forged document. It is wrong for the appellants' counsel to submit that there is a requirement for the public

prosecutor to establish all the ingredients of the offence in s 467 as well. As long as the false document concerned falls within the specific classes of documents mentioned in s 467, it would suffice for the public prosecutor to rely on the punishment provision stated in s 467.

[33] The law allows s 471 to be read with the relevant punishment provision in another offence section. Therefore, it could not be said that the charge was illegally framed or that the charge was tainted by duplicity. If Parliament has intended the punishment for a conviction under s 471 to be limited to s 465, Parliament would have explicitly said the punishment section is s 465. Parliament has left the punishment in s 471 open for the public prosecutor to choose the appropriate punishment section by the use of the phrase 'as if he had forged such document'.

[34] The appellants' counsel also argued that forgery was not established. This court finds this submission was inaptly raised at the revision hearing. As stated earlier, this court is only concerned with whether the punishment provision in s 467 could be applied to an offence under s 471. The appellants' counsel should have raised this argument at the appeal before the High Court or in the previous appeal at the Court of Appeal, not at this juncture. Notwithstanding what has been said, this court observes that the trial judge did make a finding of fact that the Form 14A (exh P41A) was a forged document after having evaluated the evidence of SP1 (the complainant), SP9 (the chemist who prepared the chemist report (P37)) and SP7 (the complainant's wife).

[35] The appellants' counsel relied on several cases below to support the contention that where a case is charged under s 471, the punishment section is not under s 467. In *Chung Onn v Public Prosecutor* [2010] 6 CLJ 211 (HC), wherein the High Court held as follows:

> [13] Coming to the matter at hand a literal and proper reading of s 471 shows that the person using a forged document shall be punished in the same manner as if he had forged the document. A careful reading of this provision show [sic] using a forged document does not equate it to forging the document but merely equate it to forging the document for purposes of sentencing. No presumption or inference arises in this provision that in using a forged document the person is said to have forged the document.
>
> [14] Section 467 on the other hand starts off with the phrase 'Whoever forges a document'. To me therefore there is no nexus between s 471 and s 467 of the Penal Code. Both the provisions must be read separately and putting both the provisions together is tantamount to a misjoinder and falls foul of s 163 of the Criminal Procedure Code which provides that for every distinct offence there shall be a separate charge.

[36] This court is of the considered view that the learned High Court judge

had misunderstood the application of s 467 in the offence section of s 471. The learned High Court judge was correct to say that there is 'no presumption or inference arises in this provision that in using a forged document the person is said to have forged the document.' However, the learned High Court judge had erroneously rejected the application of s 467 in the context of s 471.

[37] Although s 467 begins with 'whoever forges a document', that does not mean that creates another offence of forging the document in question when the section is used for a charge under s 471. As explained earlier, the phrase 'as if he had forged such document' is related to identifying which punishment section is to be applied for the offence under s 471. This is because as s 471 stated clearly that the convicted person 'shall be punished in the same manner as if he had forged such document.' A charge for an offence under s 471 that provides for punishment under s 467 does not tantamount to a misjoinder because the reference to s 467 is solely for purpose of the punishment to be applied.

[38] The appellants' counsel also cited the case *Tan Kar Loo lwn Pendakwa Raya* [2013] 7 MLJ 714; [2012] MLRHU 1089 (HC), wherein the learned High Court judge followed the reasoning of *Chung Onn*. This case carries no weight as this court has rejected the legal proposition of *Chung Onn*, and explained the error committed by the learned High Court judge in that case. The appellants' counsel also cited the case *Tan Phak Tin v Public Prosecutor* [2004] 2 MLRH 826 (HC). This court finds this case was inaptly cited because the issue in that case is not relevant here. The issue in that case was related to forgery for the purpose of cheating under s 468 of the Penal Code.

[39] The appellants' counsel raised an argument that Form 14A (exh P41A) by itself could not be construed as 'valuable security' within the envisaged meaning of s 30 of the Penal Code because the Form 14A alone could not bear any legal right to effect a transfer of a property from one person to another person without being accompanied by other documents, such as the original title deed, copies of the identity card of the transferor and transferee, payment receipts of taxes, discharge documents and etcetera.

[40] Although the submission appeals to be ingenious, the fact is that the law recognises Form 14A as the instrument of a legal transfer under the NLC, and likewise, the Stamp Act 1949 also recognises that instrument (Form 14A) as chargeable with stamp duty under item 32 of the First Schedule. The other documents that accompany with Form 14A are merely secondary to effect a legal transfer. Therefore, this submission is unsustainable in law and in fact.

[41] The appellants' counsel also argued the charge against the second appellant read together with s 109 of the Penal Code would tantamount to

duplicity of charges. Again, this submission does not hold water because the punishment section for the offence convicted (s 471) was still as provided within s 471. As alluded and explained above, s 467 was relevant only to the extent of the punishment. Therefore, there was no duplicity of charges in any manner.

[42] The appellants' counsel further raised the fact that the appellants were not present at the land office to present the Form 14A (exh P41A), therefore, it was not proved that the appellants had used the document in question. This submission goes to the root of proving the offence which is outside the purview of the revision. The review here has to be confined to the question of law raised. Any issue raised should not encroach into the finding of fact and evidence before the trial court.

CONCLUSION

[43] Based on the above analysis, this court answers the question of law as below.

[44] The punishment section for the offence under s 471 of the Penal Code would depend on the nature of the document that was used as a genuine document. If the document in question falls within those documents mentioned in s 466, then the punishment in s 466 shall be applicable. Likewise, if the document in question falls within those specific classes of documents in s 467, then the punishment in s 467 shall be applicable. If the document in question does not fall within either s 466 or s 467, then the appropriate punishment section would be s 465 by the interpretation of the phrase 'makes a false document' in s 463 to include the forging of a document within the phrase 'as if he had forged such document' in s 471 of the Penal Code.

[45] In the present case, based on the above reasoning, this court, in a unanimous decision, finds the charge was properly framed, and the charge was not defective, wrong or illegal in law. Hence, this court dismisses the revision and maintains the impugned decision dated 10 July 2023 as correct decision of the Court of Appeal.

Revision dismissed.

Reported by K Selvaraju